Supreme Court, U.S.
FILED
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No. 03-1003

In The Supreme Court of the United States

CIGNA PROPERTY AND CASUALTY,

Petitioner,

v.

TERESA VILLAR-RUIZ

and

ANTONIO RUIZ,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Florida

BRIEF IN OPPOSITION

WILLIAM G. EDWARDS
Counsel of Record
JOSE I. VALDES
MARLOW, CONNELL, VALERIUS, ABRAMS, ADLER, NEWMAN & LEWIS
4000 Ponce de Leon Boulevard
Suite 570
Coral Gables, Florida 33146
Telephone 305-446-0500
Facsimile 305-446-3667
Pro Bono Counsel for Respondent, Teresa Villar-Ruiz

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

PROCEEDINGS BELOW

The Petitioner fails to fully advise the Court of all the related proceedings in this matter. The Respondent submits that a complete recitation of all the proceedings is necessary in order for this Court to fairly consider the relief requested by the Petitioner.

ANTONIO RUIZ and TERESA VILLAR-RUIZ were married to each other and had two children. They were divorced on February 10, 1992. By virtue of the Property Settlement and Separation Agreement incorporated in the Final Judgment for Dissolution of Marriage, ANTONIO RUIZ was obligated to pay child support to TERESA VILLAR-RUIZ for the parties' remaining minor child. Thereafter, MR. RUIZ had a sporadic payment history and in 1994, the state Trial Court issued an Income Deduction Order directed to CIGNA to withhold a portion of MR. RUIZ' Longshoremen & Harbor Worker's Compensation Act benefits to pay for his child support obligations. CIGNA abided by such order until late 1996 when it unilaterally decided to discontinue the payments to MRS. VILLAR-RUIZ. Thereafter, MR. RUIZ once again began a pattern of sporadic child support payments. The case was referred to Child Support Enforcement to no avail. In early 2001, the matter was referred back to the state Trial Court which entered a second Income Deduction Order on May 8, 2001, directed to CIGNA, requiring it to withhold the sum of $628.00 per month from MR. RUIZ's monthly benefit payments and pay it towards his future monthly child support obligations. CIGNA then sought review of the Income Deduction Order with the State of Florida Third District Court of Appeals in the matter of *Cigna Property & Casualty v. Ruiz*, 834 So. 2d 234 (Fla. 3d DCA, 2002). The Third District Court of Appeals affirmed the decision

of the Trial Court on the merits of the dispute. An appeal was taken of that decision to the Florida Supreme Court in the matter of *Cigna Property & Casualty v. Teresa Villar-Ruiz*, Case No. SC 03-279 seeking certiorari review of the decision of the Third District Court of Appeals. By order dated May 19, 2003, the Florida Supreme Court denied the Petition for Certiorari review. CIGNA then sought certiorari review with this Court in the matter of *Cigna Property & Casualty v. Teresa Villar-Ruiz and Antonio Ruiz*, Case No. 03-251. This Court entered an order on October 20, 2003, denying CIGNA's request for certiorari review thereby foreclosing any further appellate review on the merits

While CIGNA was pursuing its appeal in the Third District Court of Appeals, it instituted a separate action. On or about June 4, 2002, CIGNA filed suit in U.S. District Court for the Southern District of Florida. CIGNA sought declaratory relief from the U.S. District Court for its proposition that the Income Deduction Order violated the non-alienation provision of 33 U.S.C.A. §916. While the federal law suit was pending, the Third District Court of Appeals issued its opinion on October 23, 2002. Thereafter, the U.S. District Court issued a Show Cause Order why those proceedings should not be dismissed on account of the decision from the state appellate court. By Order dated January 23, 2003, the U.S. District Court dismissed those proceedings. The U.S. District Court held that when CIGNA elected to submit the dispute to the Third District Court of Appeals for review, in doing so, CIGNA explicitly conferred jurisdiction over the matter to the state appellate court. *See Cigna Property & Casualty v. Ruiz*, 254 F.Supp. 2d 1262 (S.D. Fla., 2003). Having done so and obtained an unfavorable ruling, the U.S. District Court

lacked jurisdiction to review the state court's ruling. Thereafter, the Petitioner filed an appeal to the United States Court of Appeals for the Eleventh Circuit in Case No. 03-10903-B. By order dated October 15, 2003, the 11th Circuit Court of Appeals dismissed that case without prejudice since CIGNA had decided to pursue appellate review of the merits of the matter before this Court in case number 03-251 and as such any decision by the 11th Circuit would amount to nothing more than an advisory opinion. This appeal follows.

REASON FOR DENYING THE PETITION FOR CERTIORARI

This is the second Petition for Certiorari filed by CIGNA in this case which has endured a long and torturous travel through the state and federal courts. By order dated October 20, 2003, this Court declined to grant certiorari review of the merits of this dispute in case number 03-251. CIGNA has exhausted all appellate review of the merits of this matter. The relief which CIGNA is now requesting from this Court constitutes an advisory opinion on a procedural issue decided by the District Court and affirmed by the 11th Circuit Court of Appeals. The utter futility of the Petitioner's position is highlighted by a simple observation. Even if this Court should grant the relief requested by the Petitioner and remand the case on procedural grounds, the Lower Court would then be compelled to enter judgment in favor of the Respondent and against the Petitioner on the merits of this dispute. Accordingly, the Respondent prays that this Court decline to

exercise its discretionary power of certiorari review and close the book on this case for once and for all.

CONCLUSION

The Respondent respectfully submits to this Court that it should deny the Petition for Certiorari filed by CIGNA.

Respectfully submitted,

WILLIAM G. EDWARDS
Counsel of Record
JOSE I. VALDES
MARLOW, CONNELL, VALERIUS,
ABRAMS, ADLER, NEWMAN & LEWIS
4000 Ponce de Leon Boulevard
Suite 570
Coral Gables, Florida 33146
Telephone 305-446-0500
Facsimile 305-446-3667
Pro Bono Counsel for Respondent,
Teresa Villar-Ruiz